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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/556,012

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Herbert Meyerle

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08/03/2009

WESTMAN CHAMPLIN & KELLY, P.A.

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EXAMINER

BARRETT, SUZANNE LALE DINO

ART UNIT

PAPER NUMBER

3673

MAIL DATE

DELIVERY MODE

08/03/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/556,012

**Applicant(s)**

MEYERLE, HERBERT

**Examiner**

Suzanne Dino Barrett

**Art Unit**

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) 20-32, 35 and 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19, 33, 34 and 37-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/003)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of Species IV – Figures 4a-4d in the reply filed on 5/5/09 is acknowledged. The traversal is on the ground(s) that the international stage application did not require unity of invention and that the several claimed embodiments are "nearly identical". This is not found persuasive because "nearly identical" is not the same as identical, and furthermore, applicant characterizes the various claimed embodiments as "further embodiments" in the specification. In addition, the findings in the international stage application are not binding on the USPTO, therefore, applicant's arguments are not persuasive.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 20-32,35,36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 5/5/09.
3. Applicant should note that since the disclosure with respect to the elected Figure 4 embodiment is insufficient with regard to many of the claimed elements which applicant has indicated "read" on the elected embodiment, the examiner has reevaluated the claims such that claims 1-19,33,34,37-66 are drawn to the elected embodiment and claims 20-32,35,36 are withdrawn.

***Specification***

4. The abstract of the disclosure is objected to because of the use of the word "invention" in line 1. Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 3,13,16,45,62,65,66 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. There is insufficient disclosure for the elected Figure 4 embodiment as to how applicant proposes to operate the actuator and/or the device "via a transponder", electrically or electronically. Furthermore, the mechanical potential, guide means, slide surfaces and slide elements, mass center of the coupling locking element (claim 45) are not understood with respect to the Figure 4 embodiment, as there is insufficient disclosure on pages 19-20 for these elements.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-19,33,34,37-66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 2, "a movement of the drive" and a "movement of the take-off" are recited which renders the "said movement" in line 7 lacking in clear antecedent basis; also in claims 1 and 2, the last line, "the same direction" lacks antecedent basis. In claim 3, line 4-5 and claim 34, line 2, "the mechanical potential" lacks antecedent basis. In claims 11,17,20 and throughout the claims, "the use of the word "via" is considered indefinite. In claim 12, line 2, "the coupling device" lacks antecedent basis. In claim 35, line 5-6, "its angle" lacks clear antecedent basis. In claims 38,40 and throughout the claims, "it" and "its" are considered indefinite and lacking in clear antecedent basis. In claim 45, "the "mass center of the coupling locking element" lacks antecedent basis. In claim 63, it is unclear what steps are to be performed in carrying out the claimed "method".

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-19,33,34,37-66, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Rathmann et al 6,112,564. As best understood,

Rathmann et al teach a device comprising a drive, a take-off (1.1), an orthogonal coupling element (1.11) having a spring bias (1.12), an actuator (2.1) comprising a motor, electromagnet and/or remote transponder, switch means, stop means, and coupling lock element (2.6) with lock spring (2.3). It is noted that the mechanical potential limitations are not understood and deemed to be taught by Rathmann et al disclosing the claimed structure.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzanne Dino Barrett whose telephone number is 571-272-7053. The examiner can normally be reached on M-Th 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Suzanne Dino Barrett  
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